

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.7700 OF 2004

Mukund R. Shevde Petitioner
Vs.
Ganapati D. Mohite & Ors. . . . Respondents

None present for the Petitioner.

Sarvasri A.A. Kumbhakoni with A.M. Kulkarni
for the Respondent No.1.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 04, 2006

P.C:

1. None present for the petitioner. Shri A.A. Kumbhakoni for the respondent No.1 present.

2. Heard the learned counsel for the respondent No.1. Perused the petition and all the annexures thereto. By the present petition, the petitioner is challenging concurrent judgments of the two lower Courts. The petitioner is the tenant in respect of the suit premises and he was required to vacate the premises pursuant to the judgment of the trial Court in that regard on the ground that the petitioner has changed the user of the suit premises and, therefore, warrants eviction in terms of the provision of law comprised under Section 13(1)(a) of the Bombay Rents, Hotel And Lodging House Rates (Control) Act, 1947, hereinafter called as "the said

Act", that the petitioner had carried out unauthorised and illegal permanent construction of bathroom to the suit premises and the same warrants eviction in terms of Section 13(1)(b) of the said Act, and thirdly that the respondent bona fide required the suit premises for carrying out repairs. Both the Courts below have arrived at the concurrent findings on all these aspects and have also held that the petitioner had not even tried to acquire suitable alternative accommodation at any point of time and in addition that the premises are almost in a dilapidated condition.

2. It is pertinent to note that this matter was disposed of finally on 10-8-2005. However, pursuant to the application filed for restoration, the same was restored to the board.

3. The learned counsel appearing for the respondent No.1 has stated that the eviction order has already been executed and that the premises are no more in existence. The said submission finds duly corroborated by the affidavit filed on record by the respondents on 4-10-2004. Apparently, the petitioner does not seem to be seriously interested in the proceedings in the facts and circumstances of the case.

4. Even otherwise, the concurrent findings arrived at

by both the Courts below on the point of making permanent construction without the prior consent of the landlord as also the dilapidated condition in which the suit premises existed at the time of passing of the impugned judgments, clearly justify the impugned orders and the same do not disclose any jurisdictional error so as to warrant interference in exercise of power under Article 227 of the Constitution of India.

5. For the reasons stated above, therefore, the petition is dismissed.

(R.M.S. Khandeparkar, J.)

sjs/104wp7700.4